

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2282 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

METROCHEM INDUSTRIES LTD.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

MR PB MAJMUDAR for Respondent No. 1

MR JAYANT PATEL for Respondent Nos.2 & 3.

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 02/07/1999

ORAL JUDGEMENT [PER : C.K.THAKKAR, J]

Rule. Mr. JM Patel for Mr. Majmudar waives service. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed for an appropriate writ, order or direction quashing and setting aside the Stay

Order No.390 of 1999 dated 18th March, 1999.

Being aggrieved by the order-in-original, an appeal was filed before the appellate authority which is pending and awaits final hearing. Along with the appeal, an application for stay was also preferred. The appellate authority rejected the stay application filed by the petitioner applicant.

Various contentions were raised by Mr. Dave, learned counsel for the petitioner. It is, however, not necessary to enter into the merits of the matter in view of the fact that the appeal is pending before the appellate authority. Mr. Dave, however, submitted that a notification No. 15 of 1994 was issued by the department on 30th March, 1994. The said notification, inter alia, required certain particulars to be submitted in accordance with the provisions of Rule 57G of the Central Excise Rules, 1944. He stated that it is not even the case of the appellate authority that there was a breach or non-compliance of the said Notification No.15 of 1994. In para-5 of the impugned order, the appellate authority observed as under :-

" After examining the case records including the appellants contentions, I find that the appellants have wrongly availed the credit, in as much as , they have failed to establish evidence in the form of copy of manufacture's invoice or a certificate by the manufacturer certifying that the trader who has issued the disputed invoice has purchased the goods directly in the wholesale trade. Notification No.15/94 recognised dealers who have purchased goods directly from the manufacturer or from the depot of the manufacturer to issue the modvatable invoices, therefore, it is necessary to see that the trader issuing the modvatable invoice has purchased the goods directly from the manufacturer and for this satisfaction, the manufacturer invoice is required. Therefore, it appears that the appellants have wrongly availed the credit and accordingly in favour of the Revenue. "

Mr. Dave submitted that it is neither the requirement of Rule 57G nor of notification No.15 of 1994 nor of any other notification which empowers the authority to compel the petitioner to establish " by bringing evidence in the form of copy of manufacture's invoice or a certificate by the manufacturer certifying that the trader who has issued the disputed invoice has purchased the goods directly in the wholesale trade."

Mr Dave, therefore, contended that the insistence

on the said requirement is contrary to law and de hors the Act and Rules. He also drew our attention to the Order-in-Original wherein also this was not the ground for not permitting modvat facility to the petitioner. In fact, according to him, the predecessor of the present appellate authority had held that such is not the requirement of law. The impugned order, therefore, deserves to be quashed and set aside.

Mr. Patel for the respondents supported the order passed by the appellate authority. He submitted that for verification of goods if there is insistence for invoice or certificate by the authority, it cannot be said that such an action is arbitrary, unreasonable or unlawful. The counsel further submitted that the jurisdiction of this Court under Article 226 of the Constitution is not appellate jurisdiction and the power of judicial review is limited and can be exercised only if the order is found to be unlawful or otherwise arbitrary and unreasonable. In the facts and circumstances, it cannot be said that by insisting certain documents, the authority has exceeded jurisdiction particularly when Modvat facility was claimed by the petitioner. It was, therefore, for him to satisfy the authority regarding availability of modvat facility to him.

We were inclined to deal with the arguments of Mr. Dave by recording reasons, but Mr. Patel submitted that instead of considering the points by this Court, a direction may be issued to the appellate authority to decide the appeal. We think that it would be appropriate. Since the appeal is pending before the appellate authority, it would be in the interest of justice that we may not express any opinion one way or the other. We, therefore, direct the appellate authority to dispose of the appeal without insistence of pre-deposit. The authority will dispose of the appeal as expeditiously as possible, preferably within three months from the date of receipt of the writ.

We may observe that whatever observations made by us herein above have been made only for the purpose of this Special Civil Application and as and when appeal will be taken up for hearing by the appellate authority, it will be decided strictly on its own merits without being influenced by the observations.

Rule is made absolute accordingly with no order as to costs.

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